

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUN -1 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2011-0050-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
MICHAEL ANTHONY MAZEL,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR50702

Honorable Charles S. Sabalos, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Patrick C. Coppen

Tucson
Attorney for Petitioner

ESPINOSA, Judge.

¶1 Petitioner Michael Mazel seeks review of the trial court's order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P., in which he alleged ineffective assistance of counsel and sentencing error. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of

discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Mazel has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Mazel was convicted in 1996 of criminal trespass in the first degree, “an undesignated, open-ended offense.” The trial court suspended the imposition of sentence and placed Mazel on probation for a period of three years. Although Mazel twice admitted violating the conditions of his probation, he ultimately completed probation in 1999. After Mazel’s first probation violation, the court designated his conviction a class six felony.

¶3 Thereafter, in April 2008, Mazel wrote a letter to the trial judge, stating, inter alia, that he was facing various difficulties as a result of his felony conviction. The trial court deemed the letter a notice of post-conviction relief and appointed counsel. In his petition for post-conviction relief, Mazel argued he was entitled to relief based on ineffective assistance of counsel and “sentencing error which may have affected the sentence imposed, particularly the designation of his offense as a felony.” He alleged counsel had been ineffective in his probation violation proceedings by failing to investigate mitigating evidence adequately, “includ[ing] the severe mental breakdown [Mazel] suffered while on probation.” And he argued the court had abused its discretion in failing to consider this breakdown when designating his offense as a felony rather than a misdemeanor. He asked the court to vacate “the felony designation” and designate his offense a misdemeanor. The court summarily dismissed Mazel’s petition, concluding he had “fail[ed] to present a material issue of fact or law which would entitle [him] to relief.”

¶4 On review, Mazel essentially reasserts his arguments below and contends the trial court abused its discretion in summarily denying relief. We disagree. Mazel’s letter, which the trial court deemed his notice of post-conviction relief, was filed in April 2008, nearly twelve years after he was sentenced in September 1996 and ten years after the court designated his offense a felony in July 1998. The notice therefore was untimely. *See* Ariz. R. Crim. P. 32.4. “Any notice not timely filed may only raise claims pursuant to Rule 32.1(d), (e), (f), (g) or (h).” Ariz. R. Crim. P. 32.4. But the only claims Mazel raised in his notice and petition were based on Rule 32.1(a) and (c), and, pursuant to Rule 32.4, therefore were time-barred. Because Mazel’s claims were subject to dismissal on this basis alone, the court did not abuse its discretion in denying post-conviction relief. Thus, although we grant the petition for review, we deny relief.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge